PAPER 5

INTERNATIONAL ASSOCIATION OF ISLAMIC BANKS

7TH EXPERT LEVEL MEETING OF CENTRAL BANKS,
MONETARY AUTHORITIES AND ISLAMIC BANKS

JULY 27–29, 1992
KUALA LUMPUR, MALAYSIA

TOWARDS AN ISLAMIC FINANCIAL MARKET

Dr. Mohamed Algari bin Eid,
King Abdulaziz University

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UNDER THE AUSPICES OF
BANK NEGARA MALAYSIA
(CENTRAL BANK OF MALAYSIA)

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Introduction

Stock exchanges began originally as meeting places for sellers and buyers of securities which were limited to government bonds. Over the centuries, these exchanges developed to reach the degree of complexity and influence that they have in modern times. During this long period, the trend had clearly defined features: with every development and with the introduction of each type of transaction, the market becomes more efficient and more capable of growth and attraction of an increasing number of participants and offering a widening scope of options and instruments. Yet, the model of the market, as we see it today, is more or less an organic being, where the types of transactions and contracts represent its limbs, nerves and living cells. It is thus indivisible, otherwise its living parts would be lost and it would become no more than an incapable and ineffective body that cannot undertake its required functions. In other words, the degree of efficiency and effectiveness of the stock markets, as we know them cannot be reached except by taking it as a whole. It would, for example, be simplistic to believe that the degree of efficiency of effectiveness of a modern stock market can be reached with restricting it only to "**legitimate**" sellers and buyers of stock keeping away "**spectators**", albeit speculation is not permitted in *Shariah*. What we try to do here is to identify the permissibility, from a *Shariah* point of view, of some of the transactions taking place in a stock market. This is a prerequisite in designing a model of an Islamic stock market, where the essential arrangements and transactions are not eliminated, but also replaced with substitute that are permissible.

THE NEED FOR FINANCIAL INTERMEDIATION

Human societies have, at every time and place amounts of resources which vary in terms of quantity and quality. However, the ability of these societies to achieve economic development (continuous improvement in the prosperity of all members

of the society) does not depend upon that quantity or quality as much as it depends upon the social organization that is capable of achieving the optimum exploitation of these resources.

Since ancient times, human societies consisted of two categories of individuals, namely those who have such economic resources that are in excess of their immediate needs, and others whose resources are less than their immediate needs. Man has realised since the age of antiquity that finding an effective method for the transfer of resources between the above two categories will result in enhancing the level of prosperity for all individuals.

The invention of money has, no doubt, led to increasing efficiency of economic activity, not only for the possibility and expressing economic resources by monetary units, but also for the emergence of the concept of financial intermediation i.e. mediating between those who have excess resources and those who are deficient. The origins of the concept of financial intermediation could be traced back to the history of the old societies. Man has sought since ancient times to design methods whereby it would be possible to transfer financial surpluses in an organised and rewarding manner from the surplus groups to deficit groups so that the community can achieve the optimum utilisation of the available resources.

The early Islamic communities were no exception of this rule. Even in pre-Islamic times, the people of Makkah pursued precise methods and structures for the mobilization of savings, directing the financial surpluses towards financing the principal economic activity at that time which was international trade.

The financial intermediation function continued in the Islamic communities not separated from business activities, family and professional relations in these communities. Such was the case in most of the communities in ancient times. Specialized financial intermediation institutions did not emerge except after the creation of

commercial banks in the late medieval era in Europe.[1] This became possible for the following two reasons:

First: Relaxation by the church and by the laws in Europe of the prohibition of usury.

Second: Discovery of the possibilities created by the Fractional Reserve System.[2]

Without these two reasons, it would not have been possible for a banking institution to be set up during that era. The financial intermediation while using the contractual relationship of "**lending**" and "**borrowing**". The second reason enables it to generate cash liquidity (money creation) which is the backbone of modern banking.

When Islamic countries started to gain their independence in the middle of the twentieth century, learned Muslims realised the need for professional organisations acting as financial intermediaries as they would have a direct influence on giving a boost to economic development. However, they felt that the banking model left behind by the colonists was against the rules of transactions in *Shariah* since it was based upon the charging of usury in the form of interest debited and credited to accounts. Therefore, the Islamic jurists attempted to find an appropriate form that would be harmonious with the rules of *Shariah*. So the concept of Islamic banking was introduced on the basis of "***mudaraba***" transactions. In this model, it was possible to set up an organisation that would undertake the functions of financial intermediaries without being dependent upon usury, but would be more based on the principle of participation in profit and loss and the spread of investment risks.

1 It was believed that *Divan Al Jahbatha*, an institution founded in the second Abbasid era represented the nucleus of the banking institution as we know it today. However, what we know about *Divan Al Jahbatha* albeit quite limited is completely different from the concept of financial intermediation.

2 Fractional Reserve

translation not mine

الحمد لله نحمده
اللهم الهمنا الصواب

in this paper I am dealing mainly with stock markets. Stock markets have always been very important as a financial intermediary and played important ~~rules~~ role in the development of the now advanced countries. In an Islamic economy a stock market is even more important, because it promotes modes of finance based on equity-participation rather than debt, which is exactly what we believe is the first best in Islamic finance.

Would an Islamic financial market be similar or dissimilar to conventional one?

~~History~~

(?) What will we see in an Islamically acceptable and Sheria compatible ~~finance~~ stock market; what kind of instruments and what kind of transactions.

The first thing we find is common stocks

Since the attainment of the highest possible level of economic development, an ultimate objective in all communities, requires the optimum use of the available economic resources, the role of financial intermediaries as tools through which the highest level of economic efficiency become very decisive. Although banks play a major role in attracting savings and directing them towards investment purposes, capital markets, including stock exchanges, currently have considerable consequence in achieving this end. In spite of the fact the Muslims have been successful in finding an alternative formula to conventional banking institutions, they are yet to "**Islamize**" the working of capital market operations. In this study, we will deal with stock markets which is an integral part of the capital market in an attempt to spell out the *Shariah* rules on some of the major transactions that take place in modern exchanges.

FUNCTION OF THE STOCK EXCHANGES IN MODERN ECONOMIES

Stock exchanges are regarded as some of the most vital financial intermediation institutions in the contemporary economies. Their function complements that of other institutions such as commercial banks, insurance companies and similar organisations.

The functions of the stock exchange may be summed up in the following:–

(a) Finding an effective means of saving and investment by providing the savings tools which are capable of attracting savings and directing them for investment purposes. On the one hand, this method results in spreading the investment risks through the formula of shares and other securities designed to pool small savings and encouraging low–income individuals to participate in capital ventures by spreading the investment risks among a large number of participants. On the other hand, this method reduces the cost of finance for companies. All this will help support the process of building infrastructure of the economy and raising the rates of economic growth.

b) Striking the balance between preference of savers and investors since the parties offering savings have specific preferences relating to liquidity and risk that may not conform with the investors' preferences. It is possible through the stock exchanges and by designing the suitable contracts to create the link that could meet the requirements of both sides at the same time.

c) Allocation of resources in a manner ensuring the achievement of the optimim use. Through the stock exchanges, it will be feasible to direct the available financial resources to the best possible use so that the resources could only be acquired by the most efficient user.

d) Making available a tool through which the financial investment risks could be priced and the methods may be introduced to make available the possibility of transferring and exchanging these risks among investors. A certain investor may pay a fixed price for transferring a part of the risk to another party. This is the function carried out by options contracts in the modern market.

Providing an effective tool for controlling the private sector performance, particularly that of the public companies, and providing the facility for exchange of information about investment opportunities. These facilities will help improve the investors' decisions.

STOCK MARKET TRANSACTION – SOME *SHARIAH* VIEWPOINTS

stand on

We will try, in what follows, to spell out the *Shariah* ~~role about~~ the major transactions in stock market and the principal instruments.

1. SHARES (OR STOCKS)

The most important ~~[illegible]~~ – stock market is shares in particular common shares.

Shares are units into which a company's equity is divided. Therefore, a share represents indivisible portion of the company's total assets, real and monetary. Share – holders are the "***owner's***". Yet, the company has an independent existence from its "owners". The "limited liability" characteristic of a joint – stock company

may be the most significant in its phenomenal rise in the last century and the most problematic in the Islamic *Shariah*. Liability is of great consequence in the Islamically acceptable manner of contractual arrangements.

Unfortunately, the "limited liability" clause has no equivalent in the standard forms of contracts in *Shariah*[1]. Yet, almost all the *Shariah* scholars who addressed this query, decided that the model of joint–stock company is, in principle, acceptable in *Shariah*.[2] Justice Taqi Othmani will be presenting Today Sharia evidence which ~~st~~ supports the compatibility of this idea with Sharia

If we assume here that this is the view of the majority of scholars, we can then say that shares (common stock) as units of ownership are a permissible contract. If we assume that this is the view of the majority of *Shariah* scholars, one can say then that joint–stock company is a permissible contract, and that it is agreeable to *Shariah* under the following conditions:–

suitable for an Islamic stock market

(a) That the company avoids, in all its activities prohibited acts and contracts. For example, it should not engage in the production or distribution of *haram* commodities (such as liquor) or activities (gambling or *riba*).
Contemporary scholars debated the permissibility of holding stocks of companies that, while refraining from producing or distributing *haram* commodities and services, they borrow from conventional banks, and may deposit their excess liquidity in interest–bearing accounts. Without undermining the fact that *Shariah* does give weight to "the degree" of the misdeeds, dealing in the shares of such companies, in general, is not

1 It has been claimed by some writers that "limited liability" is not foreign to Shariah since Waqf and Bait al–Mal are limited in liability. However, there is an important dissimilarity. Unliked "limited liability" in joint – stock companies, liability in Waqf and Bait al–Mal ..... since the manager can be held responsibility if the liability arises from his mis anagement. In both cases, liability is always joined with responsibility.

2 See, for example......

permissible in *Shariah*.[1] However, some scholars ~~[illegible]~~ excepted cases where the investor is capable of influencing the company to the degree where it ~~[illegible]~~ refrain from such activities.

(b) Properties of any company consists of real assets (i.e. non–financial) and collectible financial obligation (i.e. debt or accounts receivable). Since a share represents a portion of the total assets of the company, the existence of "debt" in these assets means that a share partly represents, in actuality, debt. Since debt is not subject to sale in Islamic *Shariah*[2], dealing in such shares is not permissible. However, since extending credit to customers is common practise in business, it is quite unlikely that any company is free of this attribute. Hence, it was ruled out that it is sufficient for permissibility to have the "majority" of holdings in real assets and not financial collectible obligation. While "majority" is, by definition more than half, scholars could not agree how much more (i.e. over the 50%) is satisfactory.

It is still debated

NON–VOTING COMMON STOCK

Common stock owners appoint the board ~~[illegible]~~ and manage the company thru the voting power in the general assembly of the company.

Sometimes a class of non–voting common stock is issued for the purpose of raising additional money without losing control of the company. This practise is not very common, and in some stock exchanges, like NYSE, this type of stock is not listed. Non–voting shares usually sell for a lower price than voting one for obvious reasons. Non voting stocks may open the door for new modes of finance by Islamic banks, based on Musharakah, but temporary in duration

As for the *Shariah* view, one can cite two positions on the non – voting stocks. The first thinks that discriminating between the owners of one company is repugnant to *Shariah*

1 This is the conclusion of a workshop organized jointly by Islamic Development Bank and the Islamic Fiqh Academy of the Organisation of Islamic Conference in Jeddah, Dec. 3 – 4, 1990, as well as numerous *Shariah* scholars.

2 This is called in *Shariah* " بيع الكالئ بالكالئ.
Debt obligation is allowed to be transferred at par value subject to the agreement of creditor but it can't be negotiated, and of course, bears no interest.

because it is unjust to the owners who hold such class of shares.[1]

The other thinks that the arrangement is not unparallelled in Islamic *Shariah*. ***Mudaraba***, it is claimed, is a company with a limited voting rights of ***rabul mal*** (financial partner), since he is not allowed, in the standard form of this contract, to interfere in the working of the company once it is established.[2]
Therefore, a joint stock company with a limited voting rights of a group of its owners is permissible in *Shariah* according to this view.[3] Certainly a buyer of a non-voting share is fully aware of this characteristic of the stock at the time of purchase. Hence he is not defrauded, which significantly undermines the objection of the first position.

1.2 SHARES OTHER THAN COMMON STOCK

Common stock are but one type of shares in a stock market, albeit, the most typical and widely transacted. Almost all the *Shariah* examination which was done by the *ulama* in recent years deals with this type of stock. A joint-stock company was looked at as, simply a method to extend the rights of ownership in a company. The latter being as *sharikah* with a "**lot**" rather than a "**few**" owners, and to shares as a document showing the percentage owned by the holder. It has always been firmly ruled out that a stock has an independent existence from the underlying portion of the company's assets it represents. Therefore, only common stock in the very simplest form were considered. Once we moved to the sophisticated common, i.e. one with guarantees or option for purchase of other stocks or warrants or differentiated rights of voting ... etc. we find that the matter is yet to be dealt with and the *Shariah* rule is *not* yet determined.

they looked

1 Abdulaziz Al-Khyat, cited in Mabid Al-Jarhi, p. 131.

2 Clearly the fact that ***mudaraba*** is a partnership in profit and not in assets is not without effect on this argument.

3 Sami Hamoud is one who supports such a idea.

1.2.1 PREFERRED STOCKS

one major type of the non-common stock is the preffered. It has been recently introduced in some of gulf Centries

~~For instan~~

The preferred comes in a wide variety of categories and classes. It can be very similar to the common, with only one distinguished feature such as a priority at the distribution of profit and in case of bankruptcy. It could also be very dissimilar to the common, with guarantees of principal and return to make it close to a bond (or debenture) and hence, it will turn into a debt, rather than equity instrument. A review of the literature shows that the whole class of preferred with all its varieties is reckoned to be in – lawful in *Shariah.*[1] Adjustable – rate preferred are certainly no exception. In an Islamic stock market, no preffered stock of the above type will be dealt with

PURCHASING STOCK ON MARGIN

let us now move to some of the major transaction that are part of the daily working of major stock markets, for instance purchasing stocks on margin.

It is quite common in organized stock markets to purchase securities on margin through a broker. In this type of contract an investor can buy more shares with the same amount of money. The margin refers to the amount of ownership the investor must have in each share he purchases. The remaining amount is covered through a loan from the broker. Interest is, of course, paid on such loans, and the stock is held by the broker as a collateral on that loan. The privileges of ownership of stocks, such as voting, is enjoyed by the owner. The stocks kept with the broker are, on the other hand, used for short sales, which will be discussed later.

The fact that borrowing with interest is involved in such a transaction clearly makes it void, since interest is *riba*. However, what if borrowing with interest is not included? (i.e. the broker gives non–interest loans). The transaction will remain in our view unacceptable for two reasons: firstly, it includes a loan that produces an obvious

1 See for example Elgari, M.A., Al–Aswag Al Maliah, and Al–Rawqi, S.Z. Al Sharikah Al Musahimah fi Al Nizam al Saudi.

This rule arise from the prohibition of *riba*. Since *riba* is defined as an adiitional payment on a loan, a preferred relates to this definition. The principal is guaranteed which makes it a loan, hence an addition even if not fixed, voids the contract.

receiving a fee for sale,

benefit to the lender (albeit with no interest) namely, holding the stock and using them in other profitable transactions. The rule in Islamic *Shariah* is, every loan that is known to benefits the lender is *riba*.[1] Secondly, that the transaction includes two contracts. The rule in *Shariah* that combined contracts void each other.[2]

would there be

SHORT SELLING in an Islamic stock market ?

Short selling is the sale of a security that is not owned by the seller at the time of the sale. The seller borrows the security from or through a broker, and later buys the same from the open market to repay the debt. The rationale of such a transaction is not ambiguous; if an investor expects prices of a stock to fall after, say 90 days, he can make money by borrowing the same, selling and then buying when prices fall (to repay the loan) and keep the difference for himself. The risks involved are enormous, since prices ~~can~~ go up not down.

To determine the permissibility of such a transaction, one needs to firstly, ascertain the nature and essence of a "stock". What is a stock? If it is a fungible[3] (like money), then a loan is conceivable in *Shariah* view. When a fungible is borrowed, it becomes the ownership of the borrower, and can therefore, be used by him in whaterver fashion he deemed useful for him (and of course permissible). But if the essence of stock is that it is not a fungible, then a loan contract is not viable in *Shariah*. What really takes place then is not borrowing. not a loan. it is عارية, where the borrower must return back that ~~same~~ very stock he borrowed not one of the same company

While the loan in the first possibility may itself be permissible, the transaction involves two contracts (or more) joined together. Furthermore, the benefit that accrues to the

1 "There is riba whenever the lender benefit from a loan as a condition" is an established principle in Shariah.

2 نهى رسول الله صلى الله عليه وسلم عن بيع وسلف   بيع وسلف   , بيعتين في بيعة

3 According to Webster, fungible is such a kind or nature that one specimen or part may be used in place of another specimen or equal part in the satisfaction of an obligation.

loan. One can immeditely see that this transaction, the way it is done in the west can't be permissible.

If stocks are assumed to be non–fungible, (i.e. not capable of mutual substitution) lending is not imaginable. It can't be said, therefore, that what takes place in this transaction is borrowing of stocks but a transaction of numerous contracts joined together. Firstly, the broker is an agent who borrows money on behalf of the investor to buy him stocks and sell them. He keeps the value of these stocks as collateral. Later the broker uses this money, as agent of the investor, to buy stocks at a cheaper price and the difference will go to him (i.e. investor) while stocks will go to a third party who own them in the first place, since they were kept as a collateral in connection with a third transaction ... etc. Unfortunately, Islamic way of financial transaction doesn't work this way. Contracts ought to always be separable, if they are joined, each one voids the other, furthermore, borrowing for investment purposes is alien to the Islamic economic system. Lending is only for benevolent and compassionate purposes, and never to finance profit–making projects. Those (profit–making projects) are to be financed by equity and participation in profit and loss. Furthermore, permissibility of agency for the purpose of eliciting loans for someone else, is quite doubtful.
Therefore, there is no short-selling in an Islamic financial market.

Let us move now to

OPTIONS

Options are contracts that give their owners the right to conduct a specified transaction, such as buying or selling a certain number of shares of a given common stock at a set price within a stated period of time.[1] Options provide a means of shifting risk from parties who are presently exposed to it, for a price. The major categories of options are calls, puts, stock index options, interest–rate options and options on futures.

1 Currier, Chet, The Investors Encyclopedia, New York, Franklin Watts, 1987, p. 206.

Options have an important role to play in any stock market. They increase the market liquidity, stabilize the market by reducing fluctuations in prices, it provide an insurance-like protection to legitimate investors and finally improve the choices open to investors, hence attract more people to the market since preferences will be served better.

Many *Shariah* scholars, however, think the whole concept of "option" trading doesn't serve any useful purpose. Rather it is a scheme the goal of which is to legitimize the practice of gambling. There is no denying that options are quite prone to be used for gambling. One, nevertheless, ought not ignore the useful ends they serve.

OPTION AND THE SHARIAH JURISPRUDENCE

The idea of "option" does exist in the Islamic *fiqh*, albeith distinct from the above described formula. Option in *Shariah* is affiliated to a sale contract (and to other permissible contracts which are "**optionable**"). The option is part of the conditions of the sale and not separable from it. Thus it can't have a price of its own nor can it be traded separately. Option is defined, therefore, as giving the right to one of the contracting parties (or both) to follow through with or call off the contract within a specified period of time.

most important point

This is in accordance to the saying of the Prophet (peace be upon him) "**sellers and buyers enjoy the option unless they are separated ....**"[1] Therefore, acceptance of the proposal to sell (or buyer) is allowed a period of time which is equivalent to the period of the option given. According to Abu Hanifa the period is three days, but the majority of *ulama* allow an "**appropriate**" length of time which could be more or less than three days.

1

The idea of option in *Shariah* is not unrelated to the stock market options. The dissimilarities, however, are enormous.

Firstly, stock market options create a right (enjoyed by the buyer) and an obligation (maintained by the seller). They are independent contracts autonomous from the sale or purchase of the underlying stocks.

Secondly, even if we say that options are new contracts and that *Shariah* doesn't restrict transaction to only standard contracts, we need to decide permissibility to ascertain the subject matter of this contract.

The underlying "thing" in an option contract is a "**right**" and an "**obligation**". They are sold and traded in the market. The problem here is that *Shariah* doesn't recognize these abstract matters to be the ~~substitute~~ of a sale contract.[1] Therefore, a market for option trading is repugnant to *Shariah*. subjects

Thirdly: even if we assume that the option contract is not separable from the sale contract of (of the underlying stock), i.e. by say assuming out the naked options, we are still faced with the problem of paired contractual obligations.[2] The transaction consists of two sale contracts in one, which results in the invalidity of both.

Let us now look to the two major types of options in stock markets to see if there is a way of developing an alternative.

CALL OPTION

Calls are contracts that give their owners the right to buy a certain stock at a specified price within a stated time period.[3] While some speculators may write (i.e. sell) naked

1 Though some rights in Shariah are subject to inheritance and some are subject to cash settlement such as the right of the wife on her husband in case of divorce. But not are transferable to a third party through sale.

2 , two sales in one.

3 Currier, Chet: The Investors Encyclopedia, N.Y. Franklin Watts, 1987, p. 206.

options,[1] the majority are covered options written by conservative investors who want to protect the stocks they already own. The call in this case will be a "hedge" against a decline in the price of the stock.[2]

Many traders in calls operate without intending to exercise them but to profit from changes in market price. Furthermore, some option writers sell what is called "naked option", i.e. writing options on stocks they don't own, just for the purpose of making profit, which will be realized ~~of~~ if these expectations about prices materialize.

Options as a speculative device is, clearly, unacceptable in *Shariah*. One, nevertheless, ought not overextend the definition of speculation. There are many legitimate and Islamically desirable uses of options in stock markets. In particular, the hedging aspect of options is quite in line with the recognized needs of individuals which is not contradictory to *Shariah*. The problem remains, however, that an option contract should not have an existence independent of a sale (or lease) contract. This means that what is paid for option is part of the total sale price of the underlying good or paper.

ARBOON

There is one form of sale contract in Islamic jurisprudence which allows an option at a price. The sale of arbon (or advance) allows the buyer to advance a small percentage of the agreed upon price so that he can have time to decide. If this decision was not on the affirmative, then this advanced payment is kept by the seller.[3] Notice that the option is only for the buyer, the seller is obliged to honour his commitment. This shows that the amount paid, while it is a percentage of the total price, it is in reality a price of the option. It should be possible therefore to develop an Islamically acceptable call option based on this idea. An option is related to the underlying stock, though it has a price of its own in the case of no-sale.

1 Op. cit., p. 212.

2 There remains the possibility of an increase in price which will cause the option holder to exercise i.e. calling the stock away from the investor.

3 Not all *ulama* allow such contract. Nevertheless, we know at least the Hanbali school does allow it. See..

PUT OPTION

Puts are contracts that give their owners the right to sell a specified stock at a set price within a given time period.[1] An investor who expects prices to decrease can sell a put to protect his investment. If expectation take place he can exercise the contract hence selling above the market price (which has gone down) While there is, obviously, plenty of room for speculators, the need for such a contract is legitimate in most of the cases

Once more, the ~~substance~~ subject of the put is not the underlying stock but the right and obligation of the properties which makes objectionable from a *Shariah* point of view.
~~One may think that a put option~~

It is clearly wrong to think that a put has any similarity to the contract of *salam* which is permissible in *Shariah*. A *salam* is a sale contract where the price is advanced while the subject (the underlying commodity) is delivered at a future date.
However this contract deals with the right to sell ~~and not buy~~ only. Hence one can say in an Islamic stock market no put option is to be practiced. What about a straight Salam? Here we will be facing the problem of prohibition of Salam in identified goods.

one new instrument prevalent now in U.S. financial markets is index options.

INDEX OPTION

If the purpose of transacting in stock markets, from savers point of view is to profit, and since the latter depends on ability to predict the direction of the market, then there is no need to buy ~~and~~ or sell. Rather, it is sufficient to cash the difference between what is expected and what really took place. It is because of this index options are quite popular, where one can speculate on the whole market, as if he buys and sells every stock, in the exchange. Obviously this is pure gambling. What one buys, or sells (when he buys an index option) is a chance to win an amount of money not specified (the difference between current price and future price).

any thing.

Gambling. in *Shariah* is not permissible even for charitable purposes, let alone profit-making. Hence index options are ruled out from an Islamic financial market.

2 Currier, Chet, ibid. p. 217.

[illegible]

* No distinction between primary market & secondary
* ==sharia== position on speculative transaction.
* سندات مقارضة , ~~[illegible]~~ participation term certificate why not included?

Zubair

* dealt with transaction not stock market

حتى على لو تم تداول
الأصل في السوق
لم أقرأ العقد

* majority — بعض العلماء، اجازوا الا كرها / مع الغلبة } قياسا / مع الحاد — طريقة / قياس

* الدخول بغرض تغيير المنكر → decision of the Behrain seminar.

* Non-Voting : ..
* عربون : "The subject of the contract must be available" ~~[illegible]~~
حنبل

ذا السوم
تعريف موجودة

*

Alimudin

* suppose that purchase is done thru capital market in holding company money is difficult to trace
* stock for individual investor different
* Can't be traced
How can we deal

تكبير
تداول

Samir Shaikh

transaction are generally Halal, ~~[illegible]~~

قس بالقياس

more beneficial to conduct → Halal
Except:
propose modifications to make it allowed:

FUTURES

Future contracts are quite old, although their use in organised exchange markets is quite recent and goes back only to the 1970's. In a future, the seller promises to deliver something in the future (commodity or stock or even an index), while the buyer advances part of the price and makes a legal commitment to take delivery of the underlying subject of the contract at a future date. Many participants in the futures markets have, nevertheless, no intention of ever taking or making delivery. They enter into futures planning to close their position, before delivery dates, albeit they are legally obliged at the date of delivery.

This contract is quite similar to *salam* which is permissible in *Shariah*. In *salam* the price is advanced while the delivery takes place in a future date. Unlike options, the underling subject of future contracts is the commodity not the right or obligation. It is in this sense similar to *salam*. The dissimilarities are, however, overwhelming:

(a) It is a condition for the permissibility of *salam* to advance and pay the whole price at the moment of contracting. This never takes place in futures. The price is paid at the time of delivery, for an investor (or speculative) point of view, it doesn't make sense to pay amount in full up–front. Furthermore, the seller of option doesn't need finance (in contrast to *salam*), rather he wants to unload risk.

(b) The commodity that is underlined in a *salam* contract is not to be sold before delivery date. If this happens, then the seller engages in a prohibited contract in *Shariah* call: sale of non–owned. In modern exchanges, the commodity is sold many times before delivery dates. In fact, most of the profits are made by those who speculate between the two dates. One may say that what is being sold in each transaction is a new *salam*, therefore there is no sale of the commodity prior to delivery. The holder of a future, therefore, himself issues another future for the same quantity and dates of delivery. One will then cancel the other and he will be speculator. This can only be acceptable if there is enough distinguishing characters of each contract (i.e.

out of the market not by selling the commodity but by letting two contracts cancel each other.

With all do respect to brother Halim, I think he is trivializing fiqh. Now he says بيع العينة, and no faqih wants the name allowed بيع العينة. But even if we say that it is acceptable I assure you ~~this~~ بيع العينة is not suitable for banking

- trivializing all the fiqh
- بيع العينة سلعه

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in term of quantity and dates) which is rarely the case. Hence it is just a formula to cover up a transaction repugnant to *Shariah.*

Therefore, if we apply the condition of Salam, the contract will no longer be attractive from a financial point of view.

If on the other hand we relaxed some of the conditions, it will not be acceptable from Shariah point of view.

Hence, no such contract will exist in an Islamic fund market.

– views & rulings
– & their methodology of reaching these views
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REFERENCE

Amling, Frederick.

Investments, Englewood Cliffs, N.J Prentice–Hall, 1984

Brigham, Engene I.

Fundamentals of Financial Management, Hinsdale, Ill., The Dryden Press, 1978

Brogles, Jack, Ian Cooper and Simon Archer.

Financial Management Handbook, Alder Short, England, Gower, 1983.

Business Week, January 18, 1988, p. 37 and other Issues.

Cohen, Jerome, Edward D. Zinbarg and Arthor Zeikel.

Investment Analysis Portfolio Management, Homewood, Ill., Richard D. Irwin, 1977.

Currier, Chet, The Investor's Encyclopedia, New York, Franklin Watts, 1987

Frost, Ronald J.

Options on Futures, London, McGraw–Hill, 1988.

Gastineau, Gary L.

The Options Manual, New York, McGraw–Hill, 1988.

Hawk, William

The U.S. Government Securities Market, Chicago, Harriss Trust Bank, 1976.

Khan, Mohammad Akram.

Commodity Exchange and Stock Exchange in an Islamic Economy", Journal of Islamic Economics, Vol. 1, No. 2, July 1988.

Lorrie, James, et al.

The Stock Market: Theories and Evidence, Homewood, III, Richard Irwin, 1985.

Metwally, M.M.

"The Role of the Stock Exchange in an Islamic Economy", Journal of Research in Islamic Economics, Vol. 2, No. 1, Summer 1984, p. 21–30.

New York Institute of Finance.

Trading Stocks on the Over the Counter Market, New York, New York Institute of Finance, 1989.

Patrick, Phillips.

Inside the New Gilt–Edged Market, Woodhead–Faulkner.

Peter G. Xuereb.

The Rights of Shareholders, BSP Professional Books, Oxford, 1989.

Prager, Jones.

Fundamentals of Money and Financial Institutions, New York, Harper and Row, 1987.

Qureshi, D.M.

"Role of Stock Exchange in an Islamic Financial System", Journal of Islamic Banking and Finance, Vol. 5, July–Sept. 2988, p. 9–19.

Sarnoff, Paul.

Trading in Financial Features, London, Woodhead–Faulkner, 1985.

Sharpe, W.F.

Investments, Englewood Cliffs, N.J. Prentice–Hall, 1985.

Smith, Courtney.

Option Strategies, New York, John Wiley & Son, 1987.

Walmsley, Julian.

The New Financial Instruments, New York, John Wiley, 1988.

Wayne H. Wagner (ed.)

The Complete Guide to Securities Transactions, New York, John Wiley & Sons, 1989.

Wilson, Rodney.

"Development of Commercial Instruments in Islamic Finance" a paper presented.